IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

First Appeal (St.) No.10508 of 2007

Jamil Sharif Mohammed Sharif Shaikh & anr. ... ... Appellants (Org.Plffs.)

v/s.

M.H.A.D. Board & anr. ... ... Respondents (Org. Defts.)

Mr.P.M. P.M. Havnoor for Appellants.

Mr.S.N. Gawade, AGP Respondent No.1.

Mr.J.J . Xavier for Respondent No.2.

CORAM : ROSHAN DALVI, J.

Dated : 14th June, 2007

P.C. :

1. The Appellants have challenged the judgment and order of the Bombay City Civil Court dated 18.4.2007 in a Suit filed by the Appellants for protection of the possession of the Appellants in a garage premises admeasuring 2500 sq. ft. made of CI sheet walls and CI sheet roof with a big iron gate

on the front side, out of the N.A. assessed land admeasuring 855.6 sq. meters and situate at Survey No.37, Hissa No.26, CTS No.103, village Oshiwara, Taluka Andheri, Jogeshwari (West), Mumbai 400 102. The Appellants prayed for an injunction against demolition of the structure without due legal process being followed by the Respondents.

2. The Suit came to be filed, as what is usually called a DPL Suit. The Appellants required the Respondents to follow the DPL – Due Legal Process.

3. The seminal aspect, which has to be seen in such a Suit, is the existence of the structure by way of photographs and documents. The Appellants have relied upon the photographs showing an open space occupied by stacking marble slabs. It has an A.C. sheet roof on poles. It does not have CI sheet walls or a big iron gate on the front side. The premises is not shown to be a garage. Instead it shows the name-board of Shreenathji Marble & Granite. The

Appellants have relied upon a registration certificate issued under the Shops and Establishments Act for sale of granite and marble but not for any garage. An NA order relied upon by the Appellants is for Survey No.37, Hissa No.26, CTS No.103, which is not sent to the Appellants but to one Chandramohan Amarnath Malhotra Motor Garage on New Link Road, Bairam Baug, Jogeshwari (West), Bombay 400 102. The two documents cannot be reconciled, though showing the same survey and CTS numbers. On one survey number there are bound to be more than one structures. The Appellants have claimed that the suit property is a garage but shown in their name a licence for sale of granite and marble. The Appellants have shown an NA order in the name of another person, for which there is no licence produced.

4. Under these circumstances, the case of the Appellants is required to be considered by the learned Judge in the impugned judgment. In the impugned judgment, the learned

Judge has considered the photographs as well as the documents of the Plaintiffs. He has come to the correct conclusion that the Plaintiffs were not in possession of the suit property when the Defendants objected to their carrying on business of cutting marble and granite. Hence, the Court's observation and conclusion that the Plaintiffs have shown a mere apprehension to raise the structure on the basis of the order passed by the Court is correct. Since even in this Appeal the Plaintiffs, despite being granted specific liberty to produce the photographs of the structure, have not shown any photographs of garage premises of CI sheet and CI walls with a big iron gate on the front, no relief can be granted to the Appellants. The judgment is correct and is confirmed. Appeal is dismissed upon consideration of the oral evidence as well as the documents of the Appellants under the provisions of Order 41 Rule 11(1) of the Code of Civil Procedure.

5. If the interim stay continues today, it shall continue for a

further period of six weeks.

(ROSHAN DALVI, J.)